

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

VINCENT PAUL MELENDREZ,
Petitioner,

v.

MARGARET GILBERT ,
Respondent.

CASE NO. 17-984 RAJ

**ORDER EXTENDING STAY OF
HABEAS ACTION**

Petitioner moves to continue stay of this federal habeas action, Dkt. 48. Respondent opposes the motion arguing the state court has entered final judgment dismissing petitioner's first personal restraint petition (PRP) and therefore the stay should be lifted. The parties' pleadings establish the state court entered final judgment dismissing petitioner's first PRP. The pleadings also establish petitioner filed a second PRP requesting review of the dismissal of the first PRP. Review of the second PRP was denied but petitioner's subsequent motions to modify and to recall the mandate dismissing his PRP are still pending before the Washington Supreme Court.

Because these two motions that appear to be related to the ground for relief for which petitioner was granted leave to exhaust are still pending, extending the stay is appropriate. Petitioner is reminded the Court granted the motion to stay-and-abey federal habeas proceedings in order to permit exhaustion of his fourth ground for relief: Counsel was ineffective by failing to

1 investigate RM's sexual partners and failing to argue RM's prior bad acts and discipline were
2 admissible evidence of motive for fabrication. *See* Dkt. 18 at 30, and Dkts.19 and 21. The Court
3 extends the stay on the assumption that this ground for relief is the basis for relief asserted in the
4 first PRP which was denied, and is the ground for relief in the second PRP which is pending
5 before the Washington Supreme Court. The Court makes no ruling that this ground for relief has
6 been properly exhausted.

7 The Court accordingly ORDERS:

8 (1) Petitioner's motion to continue stay of this federal habeas action, Dkt. 48, is
9 GRANTED in part;

10 (2) The parties shall file separate status reports by June 1, 2021 regarding whether the
11 Washington Supreme Court has resolved petitioner's pending motions to modify or recall.

12 (3) If the Washington Supreme Court resolves the pending motions earlier than June
13 1, 2021, the parties shall immediately inform the Court.

14 (3) The clerk shall provide the parties with a copy of this order.

15 DATED this 8th day of March 2021.

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BRIAN A. TSUCHIDA
Chief United States Magistrate Judge